

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 3:22-CR-00327
)	
[1] CHESTER GALLAGHER)	JUDGE TRAUGER
[2] HEATHER IDONI)	
[3] CALVIN ZASTROW)	
[4] COLEMAN BOYD)	
[6] PAUL VAUGHN)	
[7] DENNIS GREEN)	

DEFENDANTS' MOTION TO ADD PEREMPTORY CHALLENGES

Defendants, Chester Gallagher, Heather Idoni, Calvin Zastrow, Coleman Boyd, Paul Vaughn, and Dennis Green, by and through undersigned counsel, hereby move the Court to increase the number of peremptory challenges allowed the defendants in light of the number of defendants, their factual differences, and their unique trial strategies.

ANALYSIS

Rule 24(b)(2) of the Federal Rules of Criminal Procedure provides that in a non-capital felony case “the government has 6 peremptory challenges and the defendant or defendants jointly have 10 peremptory challenges.” *Id.* The Rule expressly allows the trial court discretion to increase that number and to specify whether the additional challenges are to be exercised jointly or separately, however: “The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.” Fed. R. Crim. P. 24(b). Peremptory challenges are important “to help secure the constitutional guarantee of trial by an impartial jury.” *United States v. Martinez-Salazar*, 528 U.S. 304, 316 (2000); *accord, Frazier v. United States*, 335 U.S. 497, 505 (1948) (“the right [to

peremptory challenges] is given in aid of the party's interest to secure a fair and impartial jury”). Accordingly, trial courts have afforded additional peremptory challenges where several defendants are tried jointly. *See, e.g., United States v. Frazier*, No. 3:17-cr-00130, 2019 WL 4242412, (M.D. Tenn. Sept. 19, 2019) (Crenshaw, J.) (granting motion for additional peremptory challenges but not determining precise number of additional challenges at that time); *United States v. Haldeman*, 559 F.2d 31, 80 (D.C. Cir. 1976) (granting five additional peremptory strikes to three co-defendants); *United States v. Bailey*, No. CR 19-156 (CKK), 2021 WL 3709712, at *2 (D.D.C. Aug. 20, 2021) (allowing two additional peremptory challenges to be exercised separately to two co-defendants). In the only other felony conspiracy FACE case to be tried, *United States v. Handy*, the court granted five additional peremptory challenges to the five co-defendants.

In the instant case, five co-defendants are being tried jointly. And although the defendants have worked together on a number of issues, there are stark factual differences between some of them and different trial strategies among their counsel. Allowing only ten peremptory challenges, to be exercised jointly, unduly constrains the individual defendants and hampers their ability to adequately assess and exercise their challenges to best serve their individual defenses.

Defendants therefore move the Court to award two additional peremptory challenges to each defendant, to be exercised separately, in addition to the ten challenges to be exercised jointly.

Conclusion

For the foregoing reasons, Defendants respectfully move the Court for an order allowing two additional peremptory challenges for each defendant, to be exercised separately.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion to Continue was filed electronically and served on the following by the EF/CME electronic filing system:

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This the 10th day of January, 2023.

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